

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 20, 2020

**HILGERS:** All right. Good afternoon, everyone. Welcome to public hearing of the Executive Board of the Legislative Council. My name is Mike Hilgers. I'm the Chair of this board. I represent District 21, which is northwest Lincoln and Lancaster County. We will start with member introductions starting on my right, Senator Stinner.

**STINNER:** John Stinner, District 48, all of Scotts Bluff County,

**LOWE:** John Lowe, District 30-- 37, Kearney, Gibbon, and Shelton.

**McCOLLISTER:** John McCollister, District 20, central Omaha.

**BOLZ:** Senator Kate Bolz, District 29, south-central Lincoln.

**VARGAS:** Tony Vargas, District 7, downtown and south Omaha.

**KOLTERMAN:** Mark Kolterman, District 24, York, Polk, and Seward Counties.

**HILGERS:** Senator Vargas is the Vice Chair of this committee. To my right is legal counsel, Janice Satra. To my far left is the committee clerk, Paige Edwards. And our page today is John. We have two items on our agenda, LB1085 and LB1191. We will go in that order. How many are here intending to testify on these bills? So we will have a three-minute running clock. You tend to-- the order of proceedings will be we'll have an opponent. We-- I'm sorry, we'll have an opening, then we'll have a proponent, then we'll have opponent testimony, and neutral testimony. The bill sponsor will then be allowed to close. For each one, everyone wishing to testify, we will be-- just to make sure, we only have an hour, a little over an hour in this hearing room. So we want to make sure everyone gets heard. I think we should be fine today, but we will be running on a light system. It's a three-minute system. At two minutes it will be yellow. And at the third, when it hits three and it hits red, I will politely as I can interrupt you there. But there will be, if there are questions from the committee, they will ask them at that time. And when you come up, please, if you wish to testify, please fill out the green sheet and hand it to the page or the clerk. Please also silence your cell phones and enjoy the movie. Senator-- Senator Howard, LB1085. Welcome.

**HOWARD:** Thank you. You know, in HHS, we have a very strict no prop policy that we also add on to the end of our-- of our hearing notices. OK. Good afternoon, Senator Hilgers and members of the Executive

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Committee. My name is Senator Sara Howard, H-o-w-a-r-d. and I represent District 9 in midtown Omaha. Today, I'm presenting to you LB1085, a bill to change terminology in relation to the Office of Public Counsel, also known as the Ombudsman's Office. The Office of Public Counsel was created in 1969 by LB521 by Senator Loran Schmit. And it's an independent complaint handling office for the use of citizens who have complaints about the actions of administrative agencies and state government. The Ombudsman's Office works to provide administrative justice to citizens who have been wronged by state agencies and promote accountability in public administrations. Because the office is independent of the agencies it investigates, it can be an impartial entity handling disputes between citizens and agencies. The state of Nebraska has had three individuals serve as Ombudsman, including newly appointed Julie Rogers. Murrell B. McNeil was the first Ombudsman in 1971; and in 1980, Marshall Lux began serving until his retirement in 2019. When drafted, the pronouns in LB762 all stated "he," "his," "him." And my bill, LB1085, changes that to "such person" so that it could be a woman who currently serves-- so that it can reflect the judgment of the woman who currently serves as our Ombudsman. I am happy to stand for any questions.

**HILGERS:** Thank you, Senator Howard, for your opening. Are there questions? Seeing none, thank you. You're next so I assume you're sticking around for closing.

**HOWARD:** I am sticking around. I don't anticipate any testifiers on this, but I would say I have LB1144, which is in this committee. It does relate to the Ombudsman. And so should the committee wish to amend LB1085 onto that, I would-- I would be very open to that.

**HILGERS:** Thank you, Senator Howard.

**HOWARD:** Thank you.

**HILGERS:** We'll start with proponent testimony for LB1085. Anyone wishing to testify as a proponent? Seeing none, anyone wishing to testify in opposition of LB1085? Seeing none, anyone wishing to testify in a neutral capacity? Seeing none, Senator Howard waives closing. We do have one letter in support for the Women's Fund of Omaha. That will close our hearing on LB1085 and we'll go to our second and last item on the agenda, LB1191. Senator Howard.

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**HOWARD:** I do have some handouts which means they're so well put together. Here's one, here's the other, here's the third one. Thank you. All right. I already had copies. Story of my life. All right. Good afternoon, Senator Hilgers and members of the Executive Committee. My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I'm presenting LB1191, a bill to add language in statute that adds express permission for an employee of the Office of Juvenile Services, the Department of Health and Human Services, and the Department of Corrections to communicate with members of the Legislature and the Office of Public Counsel regarding office and departmental operations. There were two things that moved me to introduce this bill. First, after working on the situation with the YRTCs over the interim, it struck me how many employees wanted to talk to me, but were really scared to do so, and they were afraid of retaliation. The second item was the release of a new policy within the Department of Corrections, which you all have in your hands. And it outlined the guidelines for employees having contact with members of the Legislature in response to information requests, for writing testimony, and initiating contact with legislative members. We've highlighted the issue of concern there, but in essence, for-- for this policy in the Department of Corrections, it says if a member-- if you're-- if you contact a person who works in Department of Corrections and you're a senator, they have to tell their chief, the director's chief of staff. So, for instance, in my-- in my instance, if this was HHS, I have a lot of people who used to work with my mom. She was a social worker for 30, 34 years. And so if I said, hey, how are things going at work, they would have to report that to their boss, even though most of them are like my Aunt Barb, my Aunt Mary as they were my mom's best friends. And so I think we want to sort of make sure that these policies that-- that folks feel like they can respond to our requests when we send them. I-- I don't want you to think that this is a new issue, that the issue of folks not feeling comfortable talking to us is new. My very first year in the Legislature, I had this bill. We have a child, a child death review team and I was adding the word "maternal" to it. And the department had supported this bill. They wanted to look at maternal and infant deaths together. And then just before the hearing, I was told the department was going to come in opposition. And then the very next day, a woman who worked in public health came to my office and at the time I was in a bowling alley. And so she was really afraid that somebody was going to walk by and see her. She was like, I just want you to know, like those of us who work there are really supportive of

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this. We don't know why the department is opposing it. There wasn't a fiscal note or anything like that. But she was really afraid that if somebody saw her even talking about a bill as innocuous as that, that I believe passed on consent, she was afraid she would get in trouble, be fired, have difficulties at work. And so I think this bill is just intended to make sure that we are always able to speak to employees when they have concerns and they're always able to share with us. I did pass out an email I received from an individual who works for the Department of Health and Human Services, and he says he really wants to be able to tell us the truth about certain situations. And then on the last page, this, I think was the most relevant part of his letter, a lot of employees would like to comment to senators when any senator is on campus, but they're never able to talk to them because we also do a lot of organized tours. And so he really tries to tell them to email us later. We never want to have sort of a gag on on employees telling us what's actually-- actually going on. It helps us make better policy when we know what's really going on in the institutions that we preside over as policymakers. I think it's important for any citizen, especially for state employees, to have the right to speak with an elected official about their place of employment to promote transparency and accountability. The department did reach out to me with some concerns, and their concern revolves around the word "reasonable," which appears on line 10 and-- and line 18 of the bill. I'll leave it to them to sort of explain their-- their issues with "reasonable" because I wouldn't want to put words in their mouth. They did also request that maybe there be notice. But I worry about providing notice all the time, especially in something where it's maybe an informal setting and somebody says, I want to tell you something or you're asking about something and you're on the right track. And then if I had to provide notice then I wouldn't be able to ask them that question. I would have to provide notice to the department and then go back and follow up with that person. So I did reach out to both the Ombudsman and the Inspector General for Corrections. And I'm happy to work on language with the department to see if there is some-- some meeting of the minds that we can get to. I really do appreciate your attention to this matter, because I think it's something that we should have a conversation about, especially in light of everything that's going on in state government right now. So I'm happy to try to answer any questions you may have.

**HILGERS:** Thank you, Senator Howard, Are there questions? Senator McCollister.

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**McCOLLISTER:** Thank you, Senator Hilgers. Does Nebraska have any whistleblower provisions in statute?

**HOWARD:** I believe we do. I'll leave it to the Ombudsman and the Inspector General of Corrections to outline those.

**McCOLLISTER:** Thank you.

**HILGERS:** Thank you, Senator McCollister. Other questions? Seeing none, oh, Senator Vargas.

**VARGAS:** Just didn't raise my hand high enough. Thank you very much, Senator Howard, for bringing this. Can you just talk to, you know, one provision in this is adding the-- adding language on the ability to then testify at a hearing? I want to talk to that specific piece item added into this in addition to being able to then have engagement with senators.

**HOWARD:** Sure. I think part of, I mean, part of this is it's not just talking to us. It's also being able to go on the record. I think I've had a lot of calls to my office where people want to remain confidential. But at the same time, I've had a lot of people say, when can I get on the record? How can I do that? And if they're not permitted to testify, which we know that that's touched on a little bit in the Corrections conversation, they're-- they're able to testify as a private citizen. But this is just ensuring that they can. And I think it reiterates that we want to hear from people who are working in these positions, and we would like to give them if they feel comfortable going on the record.

**VARGAS:** Yeah, that's helpful. We did have Judiciary the other day and we had some individuals from Corrections testify. In that instance, it was in opposition to one of my bills, which is OK. But they were able to testify as citizens. But being able to testify was a perspective that was valuable for that specific piece of legislation.

**HOWARD:** Absolutely. I never want us working in a vacuum. Right? We make the worst policy is when we have the least amount of information. And so the best thing that we can do is make sure that there are-- there's a variety of opportunities for people to tell us what's actually going on, on the ground at-- at the institutions that we work for and with.

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**VARGAS:** Thank you.

**HOWARD:** Thank you,

**HILGERS:** Thank you, Senator Vargas. Other questions? Senator Stinner.

**STINNER:** In light of the whistleblower statute that Senator McCollister was talking to, is this-- has anybody even looked at this from a legal standpoint?

**HOWARD:** I couldn't speak to that.

**STINNER:** OK.

**HILGERS:** Thank you, Senator Stinner. Any other questions? Seeing none, thank you. Will you stick around for closing?

**HOWARD:** I will. I will. Thank you.

**HILGERS:** All right. We'll now welcome proponents of LB1191. Please come on down. I didn't say it earlier, but when you introduce yourself, please say and spell your name. Welcome.

**ALESIA SIZEMORE:** Thank you. Good morning. My name is Alesia, A-l-e-s-i-a, and my last name is Sizemore, S-i-z-e-m-o-r-e, and I am a former foster child of Nebraska. While in foster care and the juvenile justice system, I was subjected to horrendous conditions at the hands of those with power over me. My complaints were deemed frivolous and went unheard by staff and the facilities that held me. I endured solitary confinement, overmedication, and unnecessary physical altercations. I suffered at the hands of power, and now I'm committed to restoring power to the people. I can't stand that other people have to suffer like I did. It doesn't take much to know what concentrated power can do. Turn on the news or find it all over the Internet-- videos of police brutality, news of a political scandal, and people being taken advantage of every day. These new perspectives and truths are-- we see are just the ones that have been captured on camera and documented. Who's to say that the videos we see are the only incidous-- incidences that happen? Well, I know better. There are bad things that take place backstage and no one hears about it. We live in a world where abuse of power is a social norm and few that have it freely oppress the many without. This is horribly wrong. I want to see a world where everyone is valued, have their rights upheld; a world with equity and opportunity. I know this isn't going to be easy. It

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will take time and committed effort as we inch our way into a great new place. But let me lend one of those inches today. In the recent crisis of Geneva, the living conditions were found to be unsuitable and even detrimental to the young girls trapped inside. Per the Health and Human Services Committee report to the Nebraska Legislature on the youth rehabilitation and treatment centers, the girls were subjected to excessive solitary confinement, understaffing, and mold. Only after the girls rebelled and local police were called to intervene did the alarm raise about the conditions of Geneva. Julie Rogers, Inspector General of Child Welfare-- Welfare, wrote to Legislature, and that is what resulted in a surprise walk-through and eventual shutdown by Senators Brandt, Brooks, Howard and Lathrop. Do any of you know how long those girls had been endured, those conditions? Because I don't. Do you trust the people that run Geneva to tell you the truth? It could very well be that it's been that way for a long time. And even so, it would have remained that way if not for the girls advocating for themselves through a rebellion. No one listened to these poor girls, so they made people listen through insubordination and going to the extreme. They locked themselves in an office to call their parents out of desperation. These are minors being abused by the state, and they had to take it into their own hands to make it stop. This is not the kind of system that I can be proud of. In the Health and Human Services Committee report to the Nebraska Legislature on the Youth Rehabilitation and Treatment Centers--

**HILGERS:** Ms. Sizemore, Ms. Sizemore, I'll just stop you there just to keep to the three minutes.

**ALESIA SIZEMORE:** Yes, sir.

**HILGERS:** And see if there are questions. Go ahead.

**BOLZ:** Thank you for being here and thank you for sharing your story. If you have some additional comments to make, I'd like to hear them.

**ALESIA SIZEMORE:** I just have another half, second page.

**BOLZ:** Maybe just summarize your-- your final comments.

**ALESIA SIZEMORE:** I propose LB1191, the gag that is put on police officers, caseworkers, and correctional officers is ridiculous. In order for justice to be upheld for everyone is to make sure that we can all talk about the things that are happening behind closed doors.

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It would really tear-- tear down the barriers between checks and balances and these institutes.

**BOLZ:** Excellent. And, Ms. Sizemore, if you wouldn't mind, the page could make copies of your written testimony.

**ALESIA SIZEMORE:** Yes, I can do.

**BOLZ:** Wonderful.

**HILGERS:** Thank you, Senator Bolz, and thank you for your testimony, Ms. Sizemore. Are there questions? Seeing none, thank you very much and we'd be happy to make copies of that.

**ALESIA SIZEMORE:** Thank you.

**HILGERS:** Thank you. Other proponents for LB1191? Mr. Eickholt, welcome.

**SPIKE EICKHOLT:** Good afternoon. Thank you. Good afternoon, Chair Hilgers and members of the Executive Committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB1191. Senator Howard said it best when she introduced the bill, and we want to thank her for introducing the bill. This is-- this bill is consistent with open and transparent government. Not only that the people who sort of have the privilege of paying for their government should have a right to know sort of how it works and how it impacts people, but you as policymakers should have that insight as well. I don't think that any department other than the state Department of Corrections has been the subject of more focus in the last few years than-- by this Legislature, even by the state. Everything from the overcrowding problem to the miscalculation of sentences to the riot, to the possibility of making a new prison, all of these things seem to be happening and and taking a lot of your time and the state's time. And having an insight for those people who are actually not only in the facilities being managed by the state, but those people who are working on the frontline is helpful. And the same applies to the YRTC's as well as we've seen what happened in the interim over the summer. Senator Vargas was right. I think I testified in support of that bill, or we did at least. And there were opponent testimony. But that was very constructive opponent testimony because it was not necessarily negative or inconsistent with the goals of your bill. But it offered an insight, frankly, that I don't know the committee would have had. And that was from people who were there on

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the frontlines and could talk about solitary confinement and the-- and the department's use of that. Senator Lowe, I heard you speak on the floor a couple of times about what happened to the employees at the YRTC's. My impression was they talked directly to you as your constituents, but also as front-line people. And that's a perfect example where you explained, and we may not agree, but you explained that the policy of the state has made this sort of impact. And the only way you know that is to have that fully-- free flow of communication. And this bill is consistent with that. I know this bill sort of separates or identifies two different departments from other state departments. But I think that's consistent because this Legislature already has created an Inspector General for the Department of Corrections and also an Inspector General for the YRTC's and HHS and child welfare. So that's consistent with those earlier efforts. For those reasons and the reasons that Senator Howard testified to earlier, we would urge the committee to advance the bill.

**HILGERS:** Thank you, Mr. Eickholt. Are there questions? Senator Bolz.

**BOLZ:** Thank you, Mr. Eickholt. As a social worker, not an attorney, I may not ask this question perfectly, so please help me along. How should I think about this in terms of a constitutional right to freedom of speech? How does-- how does a state agency's limitation of an employee's communication relate to constitutional law that you can have some freedom of speech. Can you help me?

**SPIKE EICKHOLT:** I think the courts have said and the U.S. Supreme Court said a number of times that government employees still have First Amendment rights just like anyone else as government employees. Their employers can limit what they say to a certain extent for nonpublic or non-- matters that are not public concerns. So, for instance, the Department of Corrections could tell their employees, you don't need to be discussing or sharing security information to the public. You don't call the Journal Star and tell them how many guards we have on staff or what the alarm system works like and so on. That's a perfect example of something that's not a matter of public concern. But employees in Department of Corrections, YRTC, or in any government agency still have a right as any citizen to speak on things that are matters of public concern, whether they are matters of pay, matters of general planning, if we're gonna make a new prison, for instance, matters of general community safety, like the solitary confinement

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issue perhaps, and all of those other things. That's generally, sort of being very general, the state of the law,

**BOLZ:** That's-- that's really helpful. And one follow-up, if I may. The-- just the one example that's in front of us is related to the Department of Correctional Services. And the policy is that inquiries would be reported to the director's chief of staff. And then a chief of staff presumably would be making a determination about whether or not someone's communication is in the public interest or-- or not. How does that work from a constitutional perspective if an employee thinks it's in the public interest and their supervisor doesn't? How do you resolve it?

**SPIKE EICKHOLT:** Well, it's problematic. And I haven't seen the actual policy, but I've heard it, read about it, the description of it and what you just said. I think it's problematic because at-- at a minimum it puts a chilling impact on speech. You know, I don't even want to tell my supervisor that I might talk on this because I don't-- they may not want me to is sort of ominous. I think it's certainly inconsistent with the notion that an employee as a citizen should have a right to speak on these things with their own senators, with those committees. They watch NET. They read about in the paper. If they think that the senators are doing something wrong that puts their own life and safety, they ought to have a right to come down and speak on it.

**BOLZ:** Thank you.

**HILGERS:** Thank you, Senator Bolz. Senator McCollister.

**McCOLLISTER:** Thank you, Mr. Chair. Is there such a thing as executive privilege in the state of Nebraska like-- like we've seen the national scene?

**SPIKE EICKHOLT:** So I suppose somewhat. I mean, the executive branch, the Governor and the executive branch do have certain powers that belongs solely to the executive. I don't know if-- I suppose the Governor-- I hadn't thought about that-- I guess the Governor could claim some sort of executive privilege. I suppose he could claim attorney-client privilege if he's got a counsel advising him if that answers your question.

**McCOLLISTER:** Not entirely.

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**SPIKE EICKHOLT:** OK. I may have misunderstood. Sorry.

**HILGERS:** Thank you, Senator McCollister. Senator Stinner.

**STINNER:** Do you know, now this is-- this is a purpose statement, a legislative policy. So if somebody does respond to an inquiry from, say, myself, without talking to or reporting it directly to the chief of staff, is-- is that an actionable offense? Do they-- can they be fired or will they be fired?

**SPIKE EICKHOLT:** I mean, that's-- they might be. I mean, that's a good question. It could be considered a type of insubordination or a rule violation. I mean, that might be a question that could be asked of the director or someone like that.

**STINNER:** And do you know why the policy was put-- put in place in the first place? Was there a problem with security or safety or just exactly what was the problem?

**SPIKE EICKHOLT:** I don't know. I mean, I've only read the explanation for it. And I think the explanation given, and it's not for me to give it, but the explanation that was given was that they want to make sure that the department's position is clear and that people who purport to speak for the department should know what the department really feels about things. I don't know if that was really ever an actual issue, but that's the explanation that I've seen given for it. But I can't really, other than that, I don't know why it was instituted.

**HILGERS:** Thank you, Senator Stinner. Other questions? Senator Bolz.

**BOLZ:** Mr. Eickholt, you-- I don't know if this is your area of expertise so just, just redirect me if this isn't. I can find information elsewhere. Can you help me understand how-- how this issue does or doesn't relate to rights of individuals who are union workers? So it-- are there certain things that-- that union workers have a right to under state and federal law that would be inhibited by a policy saying you can't communicate with the Legislature?

**SPIKE EICKHOLT:** I know that there was an agreement between the FOP and the Department of Corrections that contained a gag rule that contained the restriction. Without researching it thoroughly and I think that a senator may have asked the Attorney General for an Opinion, but I think I read in the World-Herald the Attorney General declined to give one. But I think perhaps the union as an entity, and it's just my

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general explanation of sitting in the chair on the record, would be perhaps a union as an entity could maybe contract away its right to speak. But I don't think the union could do that on behalf of individual members and nonmembers of a union to speak on matters of public concern. And I think that if you look at the recent U.S. Supreme Court case Janus v. AFSCME in which that Supreme Court sort of upheld the individual First Amendment rights of the employees if they were inconsistent with that of their union.

**BOLZ:** Thank you.

**HILGERS:** Thank you, Senator Bolz. Other questions? Seeing none, thank you, Mr. Eickholt. Other proponents for LB1191. Welcome.

**RICH WERGIN:** Thank you, [INAUDIBLE]. Good afternoon, Senator Hilgers and members of the committee. My name is Rich Wergin, R-i-c-h W-e-r-g-i-n. I'm an organizational specialist with the Nebraska State Education Association. I'm here to represent our 28,000 members. This includes more than 45 educators at the Youth Rehabilitation Treatment Centers and Department of Corrections. NSEA supports LB1191. Many of our members who currently serve in the YRTC and DCS employees would like the opportunity to attend legislative hearings that directly relate to the teaching positions they hold. However, they find that that option impractical due to their teaching schedules. Establishing that these employees may communicate with legislators and their staff at reasonable times will allow these employees to offer valuable information about facility conditions and the educational environment in which they teach, in which the students learn. Specific to our members working with the educational plan created for the female students at Kearney facility, many of the employees have been asked to assist by expanding their class assignments. This has resulted in much longer teaching days for many. The facility staff is ultimately responsible for the implementing of the educational plan for both the male and female students, and their skills and expertise would provide input that's vital in identifying strengths and challenges that exist. Communications within the facilities are improving, with discussions around the hiring and training of additional staff at each of the YRTC sites. To that end, YRTC staff are preparing a letter that will be shared with you outlining the essential skills, knowledge, and support they believe are needed for the next administrator to be successful. One essential area that has been mentioned throughout the discussion about the learning plan is the importance of appropriate programing for male and female students. The presence of a gender-based,

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age-appropriate programing applied consistently will help to maintain the structure that is key to operating these facilities. We would like to thank you for the amendment to the five-year plan that emphasizes the importance of communicating with faculty staff, including teachers. Thank you for your work on behalf of the young men and women involved in the YRTC's. I'm prepared to answer any questions you may have.

**HILGERS:** Thank you for your testimony. Are there questions? Seeing none, thanks for coming down today.

**RICH WERGIN:** Thank you.

**HILGERS:** Anyone else wishing to testify in support of LB1191? Senator Lathrop. Welcome.

**LATHROP:** Good afternoon. Yeah, good afternoon. My name is Steve Lathrop, L-a-t-h-r-o-p, state senator from District 12, and I'm here in support of LB1191. I think this is a good time to reflect on our role as state senators. I appreciate that most of us view our primary responsibility to come down here, offer legislation, vet legislation, engage in the debate, in the committee hearing process, and so forth. The separation of powers also entrusts us with oversight responsibilities and that oversight responsibility needs to be meaningful. It is only meaningful if we as senators have access to the employees in the different agencies. I can't make the director come in and work with me as the Chair of Judiciary Committee, and he doesn't. But I want to be able to have dialogue with the people that work at the department. I think it's critical that the Ombudsman's Office and Inspector General have access to employees. And all of this, of course, is in response to a memo put out by the director of Corrections earlier this year that suggested that these people weren't supposed to talk to us, that all communications were supposed to go to the director. When this bill was introduced or shortly after that memo caused a little bit of a stir, he walked back his interpretation or said, well, we were just talking about people that testified. I'm telling you, we need to be clear that the people that work at the Department of Corrections can talk to state senators, the Ombudsman's Office, and the Inspector General without fear of reprisal. I think this is an important bill. I think it's an important bill. It reaffirms our oversight. And it also says to the employees, you can talk to the state senators, you can talk to the Ombudsman without fear

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of reprisal or to the Inspector General. For that reason, I would encourage this committee to support LB1191 and move it to the floor.

**HILGERS:** Thank you, Senator Lathrop. Thank you for joining us today. Are there any questions? Senator Vargas.

**VARGAS:** Thank you very much for coming, Senator Lathrop. You've served in this body before. Can you speak to how communication has worked in the past in regards to the departments that we would be requiring the ability to speak with members, how has this worked in the past?

**LATHROP:** This is my first experience Chairing the Judiciary Committee. It's my 10th year on that committee. I served on the Business and Labor Committee for 10 years and chaired that for 6 of the 10 years. My concern is, and maybe it's a little bit of a longer answer, as we as a body become very conservative with our appropriations, we have different committees or pardon me, different agencies that are operating with budgets that are very tight. That means that there's going to be corners cut, things that ought to be happening that don't, and we don't hear about those things. We don't hear unless we are able to have a dialog with because believe me, the agency directors aren't coming to me with problems. Director Frakes doesn't come to me and say, here are the problems over at the Department of Corrections. Can you help me fix them? I got to have people go into the department and find out what's going on before I learn anything, primarily from the Ombudsman's Office or the Inspector General, just to have a sense of where the problems are. And they're going to be evident when we are, as we have been, very conservative with our budgets and some of these agencies aren't receiving all the resources they need to function properly. It becomes more important to ensure that our ability to engage in oversight, which includes communicating with people other than the director or the commissioners, I think all the more important.

**VARGAS:** Thank you,

**HILGERS:** Thank you, Senator Vargas. Are there other questions? Seeing none, thank you, Senator Lathrop.

**LATHROP:** Thank you for your courtesy.

**HILGERS:** Additional proponents for LB1191. Welcome.

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**EDISON McDONALD:** Hi. Hello, my name is Edison McDonald. I'm the executive director for the Arc of Nebraska. We're a nonprofit of 1,500 members and 9 chapters covering the state. For over 60 years, the Arc of Nebraska has provided advocacy to people with intellectual and developmental disabilities and their families. We're here today in support of LB1191 because it addresses the important issue of ensuring that staff members may maintain communications with senators and the Public Counsel's Office. We'd like to thank Senator Howard and Senator Lathrop for bringing this forward. We have been-- we've seen the communication of staff regularly be threatened, pressured, limited, and twisted. Historically, the Arc has always worked to provide communication from staff to legislators. This has led to significant realization, such as some of the abuse that has happened at our state's institutions. We need to enable the-- we need to ensure the lines of communication remain open for all state employees and they feel the ability to provide information to our policymakers. This has provided numerous benefits to the state in the past and ensured far better accountability. While we recognize the directed intent of this legislation, we would suggest the expansion of this to develop it into a more congruent and standardized policy. This, we think, needs to address all of DHHS. Otherwise, we're afraid it might be interpreted as specifically not including those departments or at least have some sort of legislative intent stated. We recommend such language as all departments under the purview of the department or at least all public institutions as this is housed in Section 83 of the statute. And for us in particular, our state institution, Beatrice State Developmental Center, is housed under this section of statute, which is a particular area of concern. We hope that you will take this into consideration, and we hope that overall you will support this bill and move it forward to ensure that we have open and collaborative communication.

**HILGERS:** Thank you, Mr. McDonald. Are there questions? Seeing none, thank you for coming down. Other proponents for LB1191? See-- seeing none, we'll turn to opposition testimony. Any opponents wishing to testify on 11-- LB1191? Anyone else wishing to testify, you can come-- come up. There are some rows in the front that are available. Welcome.

**DANNETTE R. SMITH:** Thank you. Good afternoon, Senator Hilgers and members of the Executive Board. My name is Dannette R. Smith, D-a-n-n-e-t-t-e, middle initial R, S-m-i-t-h and I am the chief executive officer for the Department of Health and Human Services, DHHS. I am here to testify in opposition of LB1191. This bill authorizes a broad number of people, including members of the

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Legislature and their staff, the Public Counsel, and the Public Counsel staff to speak with DHHS employees at all reasonable times. The department understands the importance of transparency and accurate information to inform legislation. And in my short tenure, DHHS has been transparent with the Legislature regarding all critical issues that could impact the residents of Nebraska. The department has attempted to create transparent relationships with the Ombudsman's Office and Inspector General, keeping them individually informed. Additionally, the department and I have continued to make the Health and Human Services Committee aware of the department's action. The term "all reasonable times" is not defined, which makes it subject to the individual's interpretation. It is critical for the department to maintain proper staffing in its facilities at all times. Unplanned interpretation of staff duties to accommodate an official request can inappropriately increase the burden on other staff. It also has been the real potential to-- it has the real potential to negatively impact persons who are under our care and compromise their safety. The department intends to continue to accommodate requests from the Office of the Public Counsel and the Legislature, but needs to do so in a way that does not disrupt operations. LB1191 is concerning because it is agency-wide and would allow a broader number of officials to communicate with any agency employee about any topic. Most of the department's programs are subject to strict federal and state confidentiality and safeguarding laws. This would include sensitive information such as individual Medicaid recipient records, behavioral health, child welfare records, IRS tax information, other privileged communications. For example, a senator or someone acting on the behalf of the senator could ask a department employee for information about a constituent without the written release necessary to comply with federal and state requirements. Lastly, with respect to employee rights to participate in public hearings, the department does not prohibit any employee from testifying at a public hearing in an individual capacity or on behalf of an entity other than the department. The department only exercises its right to decide who may testify on behalf of the agency. DHHS has communication processes in place that track correspondence to assure it is being completed. This process provides accountability to ensure we are responsive to legislative inquiries. Thank you for the opportunity to testify. I would be happy to answer any questions.

**HILGERS:** Thank you, Director. Are there questions? Senator McCollister.

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**McCOLLISTER:** Thank you, Senator Hilgers. Are you aware of the whistleblower process in Nebraska?

**DANNETTE R. SMITH:** Just a little bit, not much.

**McCOLLISTER:** Thank you.

**HILGERS:** Thank you, Senator McCollister. Other questions? I have one question, which is, is it fair to characterize your position as, the department doesn't have a prin--, an objection to communicate, allowing senators to be able to speak with employees of the department and gain that and have that information sourced. But the concern is that in some instances it might be implemented in a way that could either be disruptive because it might give the unfettered asset-- access to walk off the job and to be able to speak with a senator that might disturb operations or potentially open up the door to sharing without the right protocols and restrictions to health information or other things that are protected. Is that a fair characterization of the department's?

**DANNETTE R. SMITH:** That's a fair characteristic and I would take it one step further. That, as you know more information about the care of the people that we're charged with, it then makes you responsible for that information. And I would caution you against that.

**HILGERS:** I appreciate that. So as I hear the proponents concern is just that, that-- that this flow of information with some of these policies could cut off, not just take into account concerns that you articulated, but go beyond that and cut off a source of information. And it sounds like those are two concerns. Your concerns and the concerns of the proponents could be-- could be harmonized with some potential language to address what your your concern is. Is that-- would you agree?

**DANNETTE R. SMITH:** Again, we-- we feel as though this bill is not necessary. We want to caution taking our staff off line to have conversations. It's going to impact the care of the people that we're charged with taking-- taking care of those particular persons. We also want to caution against information that may be shared that may not quite be accurate that then makes us all responsible for. I think that there's a time and place and that's what you hear us saying. We're going to support the senators coming out and visiting. We just want to know when, that's all.

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**HILGERS:** Thank you, Director.

**DANNETTE R. SMITH:** Thank you.

**HILGERS:** Senator Bolz. Oh, sorry, we have--

**DANNETTE R. SMITH:** I'm sorry, Senator Bolz.

**BOLZ:** I-- --I-- I-- I appreciate your thoughtful concerns about protecting vulnerable populations and setting fair expectations. I'm looking at the bill language and I'm-- it would help me if you could clarify or help me understand a little bit more about your concern. The language, as I read it, says that the employees shall be permitted to communicate versus language like shall be required. So, I mean, with the integrity of, you know, folks like nurses and educators that we know is out there, what is the concern that those folks would neglect their duties when it's permissive versus requiring language?

**DANNETTE R. SMITH:** Again, I think the issue for us is that if you are walking in and just having conversations, we don't feel as though we need to be aware of when that's going to occur and the appropriateness of that sharing we have no control over. But if we know that you're coming, we can certainly be prepared for-- for us, for our staff to be able to talk with you.

**BOLZ:** In the piece about disclosing confidential information, if a staff member shall be permitted to communicate, I don't see anything here that says should be required to-- to communicate confidential information or shall be required to communicate-- to answer any question that my-- at a senator's demand. I'm just trying to pull apart what you think opens up vulnerability to someone communicating inappropriate information or confidential information or communicating in an inappropriate time or place when it's permissive and not specific.

**DANNETTE R. SMITH:** I just would say that we need to be careful about what gets shared.

**BOLZ:** OK.

**DANNETTE R. SMITH:** That's that's what you hear me saying.

**BOLZ:** OK, thank you.

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**DANNETTE R. SMITH:** Thank you.

**HILGERS:** Thank you, Senator Bolz. Are there other questions? Seeing none, thank you, Director.

**DANNETTE R. SMITH:** Thank you.

**HILGERS:** Next opponent for LB1191. Welcome.

**SCOTT FRAKES:** Thank you. Good afternoon, Chairman Hilgers, members of the Executive Board. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services. I'm here today to provide testimony in opposition to LB1191. NDCS is a large agency that operates a multitude of facilities and offices in a variety of locations. But by and large, pardon me, we make provisions to permit staff the opportunity to respond to inquiries from senators, their staff members, the Public Counsel, and a multitude of other individuals. We certainly appreciate when state officials and others are able to provide advance notice, especially to our facilities and their intent to visit. However, it's imperative that staffing is not compromised in any way by tours or the needs to converse with teammates who are essentially on duty. The language in LB1191 does not define what is meant by "all reasonable times," which is challenging when you consider that our facilities are 24/7 operations and we do have periods of time where we have reduced staffing levels during limited inmate movement. The issue becomes problematic when staff members give answers or provide information that is subject to confidentiality or is contrary to my authority as a director. It would be inappropriate for staff members to address senators or other public officials about agency policy without first receiving permission to speak on behalf of the agency. We do not limit the ability of staff members to speak with members of the Legislature or to testify, provided they are doing so on their own behalf and not as representatives of the department. Individuals are certainly entitled to express their own opinions, but it's important to differentiate-- differentiate between those situations in which someone is speaking for the agency and when they are speaking for themselves. Our policy was an attempt to codify and make it clear for everyone what our expectations were. It is not a change in practice. It has been the agency's practice. I believe it was the agency's practice before I arrived. But it's certainly been the practice since I arrived. We've communicated in a variety of ways, but the best way to ensure that it's in everybody's hands and the agency is to put it into policy and

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give it to everyone. The policy clearly states there's a difference between testifying or speaking on behalf of the agency and speaking on behalf of their individual capacity as a taxpayer and a citizen. I have routinely, often in town halls, at facilities, in communications to staff, encouraged them to engage you. I want my staff to be engaged in the legislative process. They are-- have-- they have opinions and they have rights and they have issues that they need to bring forward, and on an individual-- individual basis, I want that to occur. If they were to speak on behalf of the department, I need to be part of that process as the director of the department. While I can delegate some authority, I can't delegate responsibility. Ultimately, all the decisions come back to me. And I'll be happy-- happy to try and answer questions.

**HILGERS:** Thank you, Director. One question I have. So why? I could see sort of the distinction you're making between speaking on behalf of agency and personal capacity. So one obvious place where you can imagine that happening very clear is if someone shows up in appearing and testifies and says and doesn't clarify they're not in a personal capacity. What sort of, if you're trying to draw that line and an individual one on one, what are the types of conversations that you would consider to be on behalf of the agency versus just, hey, this is what I'm observing this is what I'm seeing and part of my duties there, but they're not really speaking on your behalf?

**SCOTT FRAKES:** You know, I think it could be any issue, any practice, any policy, anything that we do within the department, except those things that fall under the true confidential-- confidentiality umbrella that a person has an opinion on they can speak in their own capacity as a taxpayer. And I'm OK that they identify themselves as an employee of the agency just like anybody, however they want to establish who they are in the society. As long as it's just clear that I'm not here saying this is what-- this is the department's stand on the issue. I think of all of you, all of you have staff that work for you here in the Legislature. Many of you have businesses and employ people. And I would be surprised if you would allow those people to routinely speak on your behalf on any issue without interaction from you, without at least briefing you on the issues. That's the expectation that I'm setting. And if someone's going to come and specifically say I'm here to testify in opposition to a specific bill on behalf of the department that I've said, yes, please do that for us, because then it's important that they have the facts, that we're clear that they're actually presenting the truth, the facts, the

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policy, all the other pieces that go with it. Oftentimes my staff have knowledge of their small piece of the world, but they don't have the bigger picture. I love opportunities to inform them, you know, give them that bigger picture. But when they share information that's inaccurate or doesn't fully represent that bigger picture, undoing that can become extremely complicated. The moment it becomes a quote in the newspaper or on the evening news, it's now fact and I really can't undo it even if it's completely inaccurate.

**HILGERS:** Thank you, Director. Other questions? Senator Vargas.

**VARGAS:** Thank you very much, Director Frakes. So if I go to Tecumseh and I want to make a visit and I want to be more informed about what is happening in our Corrections system and and take a tour, will staff be able to talk to me?

**SCOTT FRAKES:** Yes.

**VARGAS:** Am I able to freely talk to staff?

**SCOTT FRAKES:** Yes.

**VARGAS:** OK.

**SCOTT FRAKES:** We just ask that, you know, depending on what works going on at the, you know, at some point in time, we might say, can we come back to this area when they're not dealing with this situation? But yes, absolutely. And with enough space that you feel that you can have a con-- at least my belief is and many-- several of you have done this and I know Senator Lathrop has done extensive touring. We escort because we need to do that for people that don't work inside facilities, but we stay back. We give you the space so that you can have a conversation that feels at least semi-private.

**VARGAS:** So the reason I ask is because I'm trying to-- I'm trying to get to the crux of the opposition in that scenario. And I-- and I'm trying to internalize what Senator Lathrop said, which is if the agency isn't coming to, isn't coming to Chairs of subject matter committee that are making big decisions on policy proactively about issues and instead, senators are going to places and they may not be plans, they may not be sit down and it sounds like they may not get authority or permission from you to have these conversations, I'm concerned that there may not be-- what other avenues do we get to learn on what's happening on the ground in the Department of

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Corrections if we can't have a free-flowing conversation that doesn't have your authority?

**SCOTT FRAKES:** So to be clear, my opposition is not to people coming to the facility. Senators specifically come to the facilities to tour, to see, to learn, to walk and to talk. We actively facilitate that, don't have an issue. We appreciate advance notice when we can get it because then it allows us to be better prepared. But that's really not my concern. My concern is more around probably most specifically around employees being asked to come testify on a bill and me not being engaged in that process as a-- as an example. So and just making it clear for my employees that you get to speak on behalf of your own opinions and beliefs. But if you're speaking on behalf of the department, then there's a different approach on that.

**VARGAS:** Yeah. And I appreciate that. And specifically about being able to visit, because I think that's one of our opportunities to get a window into perspectives and opinions. Not everything that we hear from individuals are fact, but they inform the perspective of staff members and how they're experiencing things. But I guess this gets back to Senator Bolz's comment. I'm not-- wanting the opportunity to express what would be the opposition to permitting rather than require-- we're not requiring staff to testify. We'd be permitting them to [INAUDIBLE] in statute. And from what I'm hearing from you is your interpretation is that we would be requiring or we would be asking them and that would be seen as a requirement. So I'm trying to-- so if you want to respond to that. You know, what's the real concern?

**SCOTT FRAKES:** The way that I read the language, it opens the door and allows it to be the employee's decision to come testify on behalf of the agency. That's my concern. They can come testify as a citizen, you know, and then come testify as a citizen that works for the Department of Corrections and make that clear. But to come in and say here-- I'm here representing the Department of Corrections and here's what I believe, no, that exceeds just good business practices and will not lead to good outcomes for any of us, I believe.

**VARGAS:** OK. Last question from me and then I'll open [INAUDIBLE] questions. I just-- do you have any internal policies on how you engage or inform staff regarding legislation when you're contacting

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them, when other staff are contacting them, if you're legislative liaison?

**SCOTT FRAKES:** No, not agency wide.

**VARGAS:** OK. Any other questions?

**SCOTT FRAKES:** Other than to just remind people each year when I do town halls that being engaged in the legislative process is an important part of how they can help us achieve what we need to achieve.

**VARGAS:** Thank you. Senator Stinner.

**STINNER:** So as I read this legislative policy you put together, you start out by saying NCDS team members. Who are team members?

**SCOTT FRAKES:** Everyone that works for the department.

**STINNER:** OK, but you're saying members may be asked to respond to inquiries related to his or her responsibility area have to, have to report to you immediately, to your chief of staff.

**SCOTT FRAKES:** So that there is--

**STINNER:** All subject areas.

**SCOTT FRAKES:** So, yes, because there is-- I think that's a clarification to the initial opening of the bill in that a conversation about bowling or, you know, some other issue doesn't fall in that parameter. It's being approached and being asked to speak specifically on the work you do, the work for the agency. So it helps clarify that we're not talking about personal conversations or informal conversations. We're talking about formal work-related conversations.

**STINNER:** And that would include morale?

**SCOTT FRAKES:** Uh--

**STINNER:** Somebody wrote us a letter and said, gosh, the morale is terrible here because we're working mandatory overtime.

**SCOTT FRAKES:** No, I wouldn't see that as being the intent. It's like all policy language though as well as legislative language. But what's

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the language? And what's the intent? It's not the intent to be that specific. I don't want to-- I'm not trying to--

**STINNER:** What would be an actionable offense if they didn't follow this? I presume it's an act-- actionable offense, which means you could fire them if they don't comply with this.

**SCOTT FRAKES:** Terminations would be the the far, far end of the spectrum. I think the first time would be tell us what happened. Are you aware that there's a policy? How come you didn't let us know? If it happened again, it could then elevate and start to move into some kind of disciplinary process, a letter of reprimand or something like that. But this is really-- the intent of this, again, isn't to harm people. The intent is to make sure that we're all operating under the same set of assumptions and that we get to the outcomes that I'm looking for.

**STINNER:** I-- I do understand your position on this about policy procedure and stuff, but I also understand we're 300 percent overcrowded at Diagnostic and Evaluation. Somewhere along the line in our job is oversight. We've got to be informed of what's happening on the ground. So maybe there is some legislation we can offer. Maybe there's a solution somewhere that we could possibly get together or not get together on. But certainly right now, I-- I look at your overcrowding situation, it's worrisome at least. So I-- having access to people's opinions about what's happening on the ground, and believe me, as an employer, I balance all of that--

**SCOTT FRAKES:** I appreciate that.

**STINNER:** --I don't take what somebody is going to tell me or a whistleblower comes to me and says, this is what's happening. I'm going to go to you and I'm going to have a visit with you about it. But I'm also going to try to find what truth is. So that's what we're trying to get done.

**SCOTT FRAKES:** You know, Nebraska is a state, I think, that does a great job of providing everyone in the state opportunities to not only speak for themselves, but to be represented. The Ombudsman's Office, the Inspector General Offices, the whistleblower process. Again, the fact that I openly encourage people to come engage in this process as citizens in Nebraska. So.

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**VARGAS:** Thank you very much, Senator Stinner. Thank you much, Director Frakes. Any other questions? Seeing none, thank you very much, Director Frakes.

**SCOTT FRAKES:** Thank you.

**VARGAS:** Any other opponents for LB1191? Seeing no other opponents, anybody in the neutral position?

**JULIE ROGERS:** Good afternoon.

**VARGAS:** Thanks for being here.

**JULIE ROGERS:** Members of the Executive Board, my name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s, and I serve as the Ombudsman within the Office of Public Counsel. Prior to January 14 of this year, I served as Inspector General for Nebraska Child Welfare. I'm going to veer from my prepared testimony just a bit and state that in my experience as Inspector General and so far as Ombudsman, the employees of the Department of Health and Human Services or any other state employee when I or anyone from my office has reached out to them, they-- and ask questions of them, they have answered those questions. They-- they communicated with me I think, I-- I would hope freely and told me the truth of the situation. When it comes to being permitted to reach out to our office, though, that is where there is a lot of confusion. I don't feel that-- it is very rare that any, and again, most of my experience has been as Inspector General, as employee of the Department of Health and Human Services, feels like they would be permitted to contact our office for any reason or something going on. Now for the Whistleblower Act, the Whistleblower Act, it's also called the State Government Effectiveness Act in Nebraska. It-- it protects employees from retaliation, but only when the wrongdoing includes action that is a violation of any law, results in gross mismanagement or gross waste of funds, or creates a substantial and specific danger to public health or safety. I've also included in my written testimony different mentions in Nebraska law where it seems the law is stating and the intent of the law is to if a state employee shares information with the Public Counsel or the Inspector General, that there shall be-- not be retaliation against that employee. And with that, I would take any questions.

**VARGAS:** Thank you very much. Any questions? Senator McCollister.

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**McCOLLISTER:** Thank you. Mr. Vice Chair. Have there been a number of examples that this whistleblower feature has been utilized but then the employee has been retaliated against?

**JULIE ROGERS:** I-- I don't have any examples off the top of my head. Whistleblowers are-- whistle-- someone invoking the whistleblower law, it just doesn't happen very often.

**McCOLLISTER:** Thank you.

**VARGAS:** Any other questions? Seeing none--

**JULIE ROGERS:** Thank you.

**VARGAS:** --thank you very much for being here. Other neutral testimony? Thank you for being here.

**DOUG KOEBERNICK:** Good afternoon, Senator Vargas and members of the Executive Board. My name is Doug Koebornick, spelled K-o-e-b-e-r-n-i-c-k. I'm the Legislature's Inspector General of Corrections and I'm here to testify in a neutral capacity on LB1191. As you've heard, after the bill was introduced, the Department of Corrections shared a legislative policy with their staff. And as Senator Howard shared with you, you can see what-- how they directed people on their staff to respond to that. If they received an inquiry, they were supposed to report that immediately to their chief of staff or the director. And then the policy also directs the staff to share all information or correspondence that is to be shared with the director designee prior to distribution. So there's pretty tight controls on that. I'm not sure what all the entities listed in that policy think about this. I know I would have concerns about what's the definition of inquiry. Does that include Senator Wishart's staff survey that she sent out? If that's an inquiry, then every staff member who responded to that, according to this policy, would have to share that survey with the director before they actually submitted it to Senator Wishart. But I have a more serious concern. Nebraska state statute 47-908, which I handed out to you, states that all employees of the department shall cooperate with the Office of the Inspector General of Corrections and that employees are not required to gain supervisory approval prior to filing a complaint with or providing records or information to my office. This is a very important part of the Inspector General Act. When I received this policy in early February from the department, I contacted their legal counsel and

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shared my concern that the policy actually conflicts with state law. She agreed. So I asked her to have the policy revised and to share with all the staff why it was being revised. I did not believe that the staff should be under the impression that they have to go through all the steps in the policy when responding to my request. As far as I know, the policy has not been revised. The staff have not been notified about this difference between the policy and state law. As an office of one person, I already have enough difficulties in requesting and receiving information from the department and tracking those requests. I thought I'd share one quick example with you. In November of 2019, November 14, I requested data from the department's research division regarding certain inmates being returned to their custody. On December 2, almost three weeks later, I finally received a response from a different person. They had some questions for me. Two days later, I received an email from the research division saying they would work on that-- on that data. About a month later on January 8, I emailed the person and inquired about it. No response. January 14, about a week later, I emailed the chief of staff and I was smart enough to blind copy the director to inquire about the status of the request. Two days later, I received that. So it took two months to get data. Now I thought maybe that data was hard to get. About that same time, I was at a facility and I was talking to staff there and I inquired like, how hard is it to collect that-- is that data collected? They said, no. Later that day, I had all the data. So it took two months going through that process, one day-- less than a day to get it by actually talking to staff who knew how to do that. So--

**VARGAS:** You got the red light.

**DOUG KOEBERNICK:** Yep.

**VARGAS:** Thank you very much for your testimony. Any questions? Senator Bolz.

**BOLZ:** I'm trying to think through the different circumstances in which it might be important for an employee to be able to reach out to to you or someone in the Ombudsman's Office. And I wish I-- the question had occurred to me while the Ombudsman was in the chair. I'll pose it to you and we can figure out how to think it through. But I'd be-- I'd be curious your response. One of the challenges perhaps with the Department of Correctional Services' policy that an individual must speak to their director prior to communicating further might be under the circumstance in which the director is acting in an unethical or

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harassing way. And so if that is the circumstance, I'm not making any accusations, but we all know that that-- it is a thing that happens in employment environments. What-- what would happen and how-- how could a systemic issue of harassment or unethical behavior directed by a person in a position of power be addressed?

**DOUG KOEBERNICK:** It's a great question. And I don't know that it could without coming forward to-- to some of us, to either the senator or to you or myself and then and then we go from there, try to figure out how to address that. But there's lots of instances where staff have reached out to me to share concerns about the policies and practices of the department. For instance, in restrictive housing, I've had staff contact me and say people are not getting their showers. They're supposed to get three showers a week if they're in restrictive housing. They're not getting their showers. They're not getting their out of cell time. So staff contact me because they're concerned about the quality of life for the-- for the population. And if they couldn't contact me or senators or the Ombudsman's Office, we wouldn't know those things. So there's a lot of different reasons why this bill or just the openness. I'm not-- I'm not advocating for the bill. I'm here neutrally. But just to have the ability to talk to staff is incredibly important, especially for my position.

**BOLZ:** Thank you.

**VARGAS:** Any other questions? Seeing none, thank you very much, Mr. Koebornick. Any other neutral testimony? Seeing none, Senator Howard, for your closing. And there are no letters for the record.

**HOWARD:** Perfect. I'll be really, really fast. So I found our whistleblower statutes and I will make copies of it and pass it around because I also have a handy little handout from the Ombudsman that explains the whistleblower statutes. But essentially it's 81-2701 through 2707: state employees who report violations of law, gross mismanagement or gross waste of funds or a situation that creates a substantial and specific danger to public health and safety are protected against retaliation as long as they report to either the Ombudsman or any elected state official, including members of the Legislature and the Attorney General. So while we do have that in statute, what this is really trying to say is you've got to permit them to communicate with them. You can activate a whistleblower statute if you're not allowed to speak to a senator or the Ombudsman. I'm happy to look at language that would address some of the privacy

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concerns on the HHS side. We've never really run into that. If we need to look at a case on behalf of a constituent, we fill out a privacy form and we work with the department on that. So we've never run into a privacy issue. And I'm happy to look at language that would address Director Frakes's concern about making sure that they're not testifying on behalf of the department. Although we know that Director Frakes has been really interested in making sure that his workers do visit with their senators, I have an email from a whistleblower that where Director Frakes encouraged his employees to reach out to members of the Judiciary Committee in opposition to Senator Vargas' bill, LB1208 on restrictive housing changes. So we do know that the-- that he does want people to speak to us. And then finally, this notice around tours. That's not what this bill is about, right? HHS Committee, we-- we have a tour on Tuesday. Right? Senator Lowe, I know you visit Kearney whenever it feels right in your heart. That's what I started doing. Sweet Norm Wallman used to visit BSDC all the time. And so I think I-- this bill shouldn't touch on tours. I don't think we need to touch on that issue. This is really about that communication between workers and the Ombudsman. And so with that, I'm happy to try to answer any questions, but I know we're very short on time.

**VARGAS:** Thank you very much, Senator Howard. Are there any questions? Seeing none--

**HOWARD:** I'll make copies of this for you guys as well and drop it off.

**VARGAS:** Thank you. That completes our hearing on LB1085 and LB1191. Thank you, everyone.

**HOWARD:** Thank you.